

## 1 SENATE BILL NO. 274

2 INTRODUCED BY R. LAIBLE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS GOVERNING STATE-OWNED  
5 LAND; REVISING PROCEDURES RELATED TO THE SALE, LEASE, AND PURCHASE OF LAND BY THE  
6 DEPARTMENT OF FISH, WILDLIFE, AND PARKS; REVISING REQUIREMENTS FOR LAND APPRAISALS  
7 INVOLVING STATE TRUST LAND; REVISING INVENTORY REQUIREMENTS FOR STATE LAND; REQUIRING  
8 CONSIDERATION OF PUBLIC ACCESS TO CONSERVATION EASEMENTS PURCHASED WITH PUBLIC  
9 FUNDS; REVISING REPORTING REQUIREMENTS FOR LAND BANKING; REQUIRING PAYMENTS TO  
10 COUNTIES FOR ALL LAND OWNED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS WITHIN A  
11 COUNTY; AMENDING SECTIONS 23-1-102, 23-1-108, 76-6-201, 76-6-206, 77-1-101, 77-1-403, 77-1-404,  
12 77-2-201, 77-2-203, 77-2-207, 77-2-213, 77-2-366, 85-1-804, 85-1-805, 87-1-209, AND 87-1-603, MCA; AND  
13 PROVIDING AN EFFECTIVE DATE."

14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16

17 **Section 1.** Section 23-1-102, MCA, is amended to read:

18 **"23-1-102. Powers and duties of department of fish, wildlife, and parks.** (1) The department shall  
19 make a study to determine the scenic, historic, archaeologic, scientific, and recreational resources of the state.  
20 The department may by purchase, lease, agreement, or acceptance of donations acquire for the state any areas,  
21 sites, or objects that in its opinion should be held, improved, and maintained as state parks, state recreational  
22 areas, state monuments, or state historical sites. The department, with the consent of the commission, may  
23 acquire by condemnation, pursuant to Title 70, chapter 30, lands or structures for the purposes provided in  
24 87-1-209(2).

25 (2) The department may accept in the name of the state, in fee or otherwise, any areas, sites, or objects  
26 conveyed, entrusted, donated, or devised to the state. It may accept gifts, grants, bequests, or contributions of  
27 money or other property to be spent or used for any of the purposes of this part.

28 (3) A contract, for any of the purposes of this part, may not be entered into or another obligation incurred  
29 until money has been appropriated by the legislature or is otherwise available. ~~If the contract or obligation pertains~~  
30 ~~to acquisition of areas or sites in excess of either 100 acres or \$100,000 in value, the board of land~~

1 ~~commissioners shall specifically approve the acquisition.~~

2 (4) The department has jurisdiction, custody, and control of all state parks, recreational areas, public  
3 camping grounds, historical sites, and monuments, except wayside camps and other public conveniences  
4 acquired, improved, and maintained by the department of transportation and contiguous to the state highway  
5 system. The department may designate lands under its control as state parks, state historical sites, state  
6 monuments, or by any other designation that it considers appropriate. The department may remove or change  
7 the designation of any area or portion of an area and may name or change the name of any area. The department  
8 may lease those portions of designated lands that are necessary for the proper administration of the lands in  
9 keeping with the basic purpose of this part."

10

11 **Section 2.** Section 23-1-108, MCA, is amended to read:

12 **"23-1-108. Acquisition of certain state parks, monuments, or historical sites.** (1) Any person,  
13 association, or representative of a governing unit may submit a proposal for the acquisition of a site or area  
14 described in 23-1-102 from the income of the trust fund created in 15-35-108 to the department of fish, wildlife,  
15 and parks by July 1 of the year preceding the convening of a legislative session.

16 (2) The fish, wildlife, and parks commission shall present to the legislature by the 15th day of any  
17 legislative session a list of areas, sites, or objects that were proposed for purchase for use as state parks, state  
18 recreational areas, state monuments, or state historical sites with the money contained in the parks account. The  
19 list must contain:

20 (a) the purpose for which each area, site, or object would be used;

21 (b) the estimated cost of each area, site, or object;

22 (c) the reasons given by the requestor for needing each area, site, or object;

23 (d) a priority order recommended by the department for each area, site, or object;

24 (e) the recommendation of the department as to when each area, site, or object is needed; and

25 (f) any long-range plans associated with the area, site, or object and the estimated cost of the long-range  
26 plans.

27 (3) The legislature must appropriate funds from this account before any park, area, monument, or site  
28 may be purchased."

29

30 **Section 3.** Section 76-6-201, MCA, is amended to read:

1           **"76-6-201. Conservation easements in general.** (1) ~~Where~~ If a public body acquires ~~under this chapter~~  
 2 ~~an~~ less than a fee interest in land ~~less than fee~~ under this chapter, this acquisition ~~shall~~ must be by conservation  
 3 easement.

4           (2) A conservation easement may be applied to urban or nonurban land.

5           (3) A purchase of a conservation easement by a public body under this chapter must provide for public  
 6 access to the property subject to the conservation easement."

7  
 8           **Section 4.** Section 76-6-206, MCA, is amended to read:

9           **"76-6-206. Review by local planning authority.** In order to minimize conflict with local comprehensive  
 10 planning, all conservation easements ~~shall be~~ are subject to review prior to recording by the appropriate local  
 11 planning authority for the county within which the land lies. It ~~shall be~~ is the responsibility of the entity acquiring  
 12 the conservation easement to present the proposed conveyance of the conservation easement to the appropriate  
 13 local planning authority. The local planning authority ~~shall have~~ has 90 days from receipt of the proposed  
 14 conveyance within which to review and ~~to~~ comment upon the relationship of the proposed conveyance to  
 15 comprehensive planning for the area. The review must include the requirement for public access provided in  
 16 76-6-201(3). ~~Such~~ The comments ~~will not be~~ are not binding on the proposed grantor or grantee but ~~shall be~~ are  
 17 merely advisory in nature. The proposed conveyance may be recorded after comments have been received from  
 18 the local planning authority or the local planning authority has indicated in writing it will not have ~~no~~ comments  
 19 or 90 days have elapsed, whichever occurs first."

20

21           **Section 5.** Section 77-1-101, MCA, is amended to read:

22           **"77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state land  
 23 in 77-1-701, in this title, the following definitions apply:

24           (1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana  
 25 constitution.

26           (2) "Commercial or concentrated recreational use" means any recreational use that is organized,  
 27 developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes  
 28 all outfitting activity and all activities not included within the definition of general recreational use.

29           (3) "Department" means the department of natural resources and conservation provided for in Title 2,  
 30 chapter 15, part 33.

1           ~~(4)~~ "Fair market value" means the price that would be agreed to by a willing and informed seller and  
 2 buyer, taking into consideration the highest and best reasonably available use and the value for that use, provided  
 3 the current use may not be presumed to be the highest and best use.

4           ~~(4)~~(5) (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and  
 5 other activities determined by the board to be compatible with the use of state lands.

6           (b) General recreational use does not include the use of streams and rivers by the public under the  
 7 stream access laws provided in Title 23, chapter 2, part 3.

8           ~~(5)~~(6) "Legally accessible state lands" means state lands that can be accessed by:

9           (a) dedicated public road, right-of-way, or easement;

10          (b) public waters;

11          (c) adjacent federal, state, county, or municipal land if the land is open to public use; or

12          (d) adjacent contiguous private land if permission to cross the land has been secured from the  
 13 landowner. The granting of permission by a private landowner to cross private property in a particular instance  
 14 does not subject the state land that is accessed to general recreational use by members of the public, other than  
 15 those granted permission.

16          ~~(6)~~(7) (a) "State land" or "lands" means:

17          (i) lands granted to the state by the United States for any purpose, either directly or through exchange  
 18 for other lands;

19          (ii) lands deeded or devised to the state from any person; and

20          (iii) lands that are the property of the state through the operation of law.

21          (b) The term does not include:

22          (i) lands that the state conveys through the issuance of patent;

23          (ii) lands that are used for building sites, campus grounds, or experimental purposes by a state institution  
 24 and that are the property of that institution;

25          (iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-25-307;

26 or

27          (iv) lands acquired through investments under the provisions of 17-6-201."

28

29           **Section 6.** Section 77-1-403, MCA, is amended to read:

30           "**77-1-403. Capability inventory.** A capability inventory ~~shall~~ must be made for all state land and must

1 ~~be considered~~ prior to changing the classification of state lands ~~land~~. ~~Such~~ The inventory shall ~~must~~ include, ~~when~~  
 2 ~~appropriate to the classification~~, information on:  
 3 (1) soils capability;  
 4 (2) vegetation;  
 5 (3) wildlife use;  
 6 (4) ~~mineral characteristics~~, resources and assessments, including a market analysis of the mineral  
 7 resources;  
 8 (5) public use;  
 9 (6) aesthetic values;  
 10 (7) ~~cultural values~~, resources and assessment of those resources;  
 11 (8) ~~surrounding land use, and any other resource~~;  
 12 (9) zoning; or planning information ~~which that~~ is related to the classification; and  
 13 (10) any other inventories and assessments required by law or that the department determines are  
 14 necessary."

15  
 16 **Section 7.** Section 77-1-404, MCA, is amended to read:

17 **"77-1-404. Records of state lands.** All field books, plats, maps, and records of the department ~~shall~~  
 18 must show the class to which each tract ~~therein~~ of state land belongs and whether it ~~the state land~~ belongs to the  
 19 public schools of the state, or to a state institution, or ~~other~~ to another entity according to the grant or instrument  
 20 by which title to the land has passed to the state. ~~They shall~~ The records must also show whether or not the coal  
 21 or other minerals in the land are reserved by the United States and ~~shall~~ must contain any other information the  
 22 department considers necessary. The information required by this section must be reflected in the index required  
 23 by 77-1-705."

24  
 25 **Section 8.** Section 77-2-201, MCA, is amended to read:

26 **"77-2-201. Exchange of land with United States or tribal governments.** (1) (a) The board may enter  
 27 into contracts or agreements with the United States or any department ~~thereof~~ of the United States having  
 28 jurisdiction for the waiving and relinquishment to the United States of any rights of the state in and to sections 16  
 29 and 36 of any township and to any other parcel of state lands, provided that the state ~~shall~~, in lieu of the rights  
 30 so waived and relinquished, must receive from the United States other lands of equal or greater value.

1 (b) The current user of the land transferred to the United States may continue to enjoy the use of the land  
 2 under terms and conditions required by the federal government and in accordance with Public Law 88-607, as  
 3 amended, {43 U.S.C. 1411 through 1418}, and the current user of the land received from the United States may  
 4 continue to ~~utilize~~ use the land on the terms and conditions imposed by law or by the board.

5 (2) The board may enter into a contract or agreement with a tribal government as defined in 18-11-102  
 6 or with the United States for the relinquishment to the tribal government or to the United States in trust for the  
 7 tribal government of any rights of the state to some or all state lands located wholly within the exterior boundaries  
 8 of the tribal government's reservation as recognized by the federal government; ~~however~~ However, the state,  
 9 in exchange for these relinquished rights, must receive from the tribal government or the United States lands of  
 10 equal or greater value. ~~No~~ A contract or agreement may not be entered into under this section without first  
 11 consulting with the board of county commissioners of the county or counties in which the lands to be exchanged  
 12 are located.

13 (3) In considering a proposed exchange under this section, the board shall consider the impact of the  
 14 proposed exchange on public access to all land involved in the proposed exchange."

15  
 16 **Section 9.** Section 77-2-203, MCA, is amended to read:

17 **"77-2-203. Exchange for nongovernment, state government, and other state and local public**  
 18 **entity land.** (1) Subject to subsection (2), the board is authorized to exchange state land for land owned by:

- 19 (a) the state or an agency of the state;  
 20 (b) a political subdivision of the state, including a county, city, town, public corporation, or district created  
 21 pursuant to state law;  
 22 (c) any other public body of the state; or  
 23 (d) a nongovernmental entity, including but not limited to an individual, association, partnership, or  
 24 corporation.

25 (2) The board may exchange the land described in subsection (1) if the land is of equal or greater value,  
 26 as determined by the board after appraisal by a qualified land appraiser, than the state land and as closely as  
 27 possible equal in area. The contents of the appraisal must be made available to any person who makes a written  
 28 request to the board. The board shall place priority on exchanges that result in consolidation of state lands into  
 29 more compact bodies. This section does not apply to exchanges undertaken under 76-12-107.

30 (3) If the requirements of 77-2-204 and subsections (1) and (2) of this section are met, state lands

1 bordering on navigable lakes and streams or other bodies of water with significant public use value may be  
 2 exchanged for nongovernment-owned land if the nongovernment-owned land borders on similar navigable lakes,  
 3 streams, or other bodies of water.

4 (4) In considering a proposed exchange under this section, the board shall consider the impact of the  
 5 proposed exchange on public access to all land involved in the proposed exchange."

6  
 7 **Section 10.** Section 77-2-207, MCA, is amended to read:

8 **"77-2-207. Approval or disapproval of exchanges.** All exchanges of state lands are subject to  
 9 approval and confirmation by the board, and ~~no~~ an exchange is not considered completed until after ~~such~~  
 10 approval and confirmation. The board has the power and ~~it is its~~ duty to disapprove any exchange ~~which~~ that in  
 11 its opinion would be disadvantageous to the state. The board may not approve an exchange that requires a cash  
 12 donation from the nonstate party."

13  
 14 **Section 11.** Section 77-2-213, MCA, is amended to read:

15 **"77-2-213. Department to investigate.** When a proposal for an exchange pursuant to 77-2-211 is made  
 16 and the owners of the respective tracts involved seem agreeable to negotiate ~~such exchanges~~ the exchange, the  
 17 proposal ~~shall~~ must be referred to the department, ~~and the~~ The department shall thoroughly investigate all the  
 18 lands involved in the proposal and estimate the value of all of the lands and consider every factor in connection  
 19 with the proposal ~~as~~ that may affect the public interest, including public access to all land involved in the proposed  
 20 exchange."

21  
 22 **Section 12.** Section 77-2-366, MCA, is amended to read:

23 **"77-2-366. Land banking process -- time limit -- report to environmental quality council.** (1) State  
 24 land may not be sold through the land banking process pursuant to 77-2-361 through 77-2-367 after October 1,  
 25 2008. Land banking purchases under 77-2-364 may continue after October 1, 2008, until all the proceeds in the  
 26 state land bank fund are expended or revert to the public school fund or the permanent fund of the respective  
 27 trust pursuant to 77-2-362(2)(d).

28 (2) The department shall provide a report to the environmental quality council by July 1, ~~2008~~, of each  
 29 year that describes the results of the land banking program in detail. At a minimum, the report must summarize  
 30 the sale and purchase transactions made through the program by type, location, acreage, value, and trust

1 beneficiary. The environmental quality council shall make any recommendations that it determines necessary  
2 regarding the implementation of the state land banking process, including recommendations for legislation."  
3

4 **Section 13.** Section 85-1-804, MCA, is amended to read:

5 **"85-1-804. Appraisal of project lands -- adjustment of lease fee.** The department of revenue shall  
6 appraise project lands owned by the department and shall maintain records of the appraisals. ~~Not less than~~  
7 Subject to the requirements of 85-1-805, at least once during the term of a lease, the department of revenue shall  
8 reappraise the project lands and adjust the lease fee accordingly. ~~The~~ Except as provided in 85-1-805, the  
9 department may not increase a lease fee for a current lessee more than 2% a year during any period of 10  
10 consecutive years."  
11

12 **Section 14.** Section 85-1-805, MCA, is amended to read:

13 **"85-1-805. Full market value required -- cabin site procedure.** (1) The department shall determine  
14 the full market value of project lands. The department may not accept a bid that is below full market value.

15 (2) If project land is leased for a cabin site, the department shall set the annual fee based on full market  
16 value for each cabin site and for each licensee or lessee who at any time wishes to continue or assign the license  
17 or lease. The fee must reflect full market value based on the appraisal of the cabin site as determined by the  
18 department of revenue. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the  
19 fee into two equal payments due March 1 and September 1. The value may be increased or decreased as a result  
20 of the statewide periodic revaluation of property pursuant to 15-7-111 without any adjustments as a result of  
21 phasing in values. An appeal of a cabin site value determined by the department of revenue must be conducted  
22 pursuant to Title 15, chapter 15.

23 (3) The department shall set the fee of each initial cabin site license or lease or each current cabin site  
24 license or lease for a person who does not choose to retain the license or lease. The initial fee must be based  
25 upon a system of competitive bidding. The fee for a person who wishes to retain that license or lease must be  
26 determined under the method provided for in subsection (2)."  
27

28 **Section 15.** Section 87-1-209, MCA, is amended to read:

29 **"87-1-209. Acquisition and sale of lands land or waters water.** (1) (a) The department, with the  
30 consent of the commission and, ~~in the case of land acquisition involving more than 100 acres or \$100,000 in~~

1 ~~value~~, the approval of the board of land commissioners, may acquire land or water by purchase, lease,  
 2 agreement, gift, or devise and may acquire easements upon ~~lands~~ land or ~~waters~~ water for the purposes listed  
 3 in ~~this~~ subsection (1)(b). The proposed acquisition presented to the commission and the board of land  
 4 commissioners must contain:

5 (i) the purpose for which the land or water would be used;  
 6 (ii) the estimated cost of the land or water;  
 7 (iii) the reasons for needing the land or water;  
 8 (iv) the recommendation of the department as to when the land or water is needed; and  
 9 (v) any long-range plans associated with the land or water and the estimated cost of the long-range  
 10 plans.

11 (b) The department may develop, operate, and maintain acquired ~~lands~~ land or ~~waters~~ water:  
 12 ~~(a)~~(i) for fish hatcheries or nursery ponds;  
 13 ~~(b)~~(ii) ~~as lands or water suitable~~ for game, bird, fish, or fur-bearing animal restoration, propagation, or  
 14 protection;  
 15 ~~(c)~~(iii) for public hunting, fishing, or trapping areas;  
 16 ~~(d)~~(iv) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or  
 17 fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable  
 18 species;  
 19 ~~(e)~~(v) for state parks and outdoor recreation; or  
 20 ~~(f)~~(vi) to extend and consolidate by exchange, ~~lands~~ land or ~~waters~~ water suitable for these purposes.

21 (2) The department, with the consent of the commission, may acquire by condemnation, as provided in  
 22 Title 70, chapter 30, ~~lands~~ land or structures for the preservation of historical or archaeological sites that are  
 23 threatened with destruction or alteration.

24 (3) (a) Subject to section 2(3), Chapter 560, Laws of 2005, the department, with the consent of the  
 25 commission, may dispose of ~~lands~~ land and water rights acquired by it on those terms after public notice as  
 26 required by subsection (3)(b) of this section, without regard to other laws that provide for sale or disposal of state  
 27 ~~lands~~ land and with or without reservation, as it considers necessary and advisable. The department, with the  
 28 consent of the commission, may convey department ~~lands~~ land and water rights for full market value to other  
 29 governmental entities or to adjacent landowners without regard to the requirements of subsection (3)(b) or (3)(c)  
 30 if the land is less than 10 acres or if the full market value of the interest to be conveyed is less than \$20,000.

1 When the department conveys land or water rights to another governmental entity or to an adjacent landowner  
2 pursuant to this subsection, the department, in addition to giving notice pursuant to subsection (3)(b), shall give  
3 notice by mail to the landowners whose property adjoins the department property being conveyed.

4 (b) Subject to section 2(3), Chapter 560, Laws of 2005, notice of sale describing the ~~lands~~ land or ~~waters~~  
5 water to be disposed of must be published once a week for 3 successive weeks in a newspaper with general  
6 circulation printed and published in the county where the ~~lands~~ land or ~~waters~~ are water is situated or, if a  
7 newspaper is not published in that county, then in any newspaper with general circulation in that county.

8 (c) The notice must advertise for cash bids to be presented to the director within 60 days from the date  
9 of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal  
10 to 10% of the amount bid. The highest bid must be accepted upon payment of the balance due within 10 days  
11 after mailing notice by certified mail to the highest bidder. If that bidder defaults on payment of the balance due,  
12 then the next highest bidders must be similarly notified in succession until a sale is completed. Deposits must be  
13 returned to the unsuccessful bidders except bidders defaulting after notification.

14 (d) The department shall reserve the right to reject any bids that do not equal or exceed the full market  
15 value of the ~~lands~~ land and ~~waters~~ water as determined by the department. If the department does not receive  
16 a bid that equals or exceeds fair market value, it may then sell the ~~lands~~ land or water rights at private sale. The  
17 price accepted on any private sale must exceed the highest bid rejected in the bid process.

18 (4) When necessary and advisable for the management and use of department property, the director  
19 is authorized to grant or acquire from willing sellers right-of-way easements for purposes of utilities, roads,  
20 drainage facilities, ditches for water conveyance, and pipelines if the full market value of the interest to be  
21 acquired is less than \$20,000. Whenever possible, easements must include a weed management plan. Approval  
22 of the commission is not required for grants and acquisitions made pursuant to this subsection. In granting any  
23 right-of-way pursuant to this subsection, the department shall obtain a fair market value, but the department is  
24 not otherwise required to follow the disposal requirements of subsection (3). The director shall report any  
25 easement grant or acquisition made pursuant to this subsection to the commission at its next regular meeting.

26 (5) The department shall convey ~~lands~~ land and water rights without covenants of warranty by deed  
27 executed by the governor or in the governor's absence or disability by the lieutenant governor, attested by the  
28 secretary of state and further countersigned by the director.

29 (6) The department, with the consent of the commission, is authorized to ~~utilize~~ use the installment  
30 contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing

1 animals and game and nongame birds may breed and replenish and areas that provide access to fishing sites  
2 for the public. The total cost of installment contracts may not exceed the cost of purchases authorized by the  
3 department and appropriated by the legislature.

4 (7) The department is authorized to enter into leases of land under its control in exchange for services  
5 to be provided by the lessee on the leased land."  
6

7 **Section 16.** Section 87-1-603, MCA, is amended to read:

8 **"87-1-603. Payments to counties for department-owned land --exceptions.** Before November 30  
9 of each year, the treasurer of each county in which the department owns any land shall describe the land, state  
10 the number of acres in each parcel, and request the drawing of a warrant to the county in a sum equal to the  
11 amount of taxes which would be payable on county assessment of the property were it taxable to a private citizen.  
12 The director shall approve or disapprove the request. The director may disapprove a request only if the director  
13 finds it to be inconsistent with this section. If the director disapproves a request, the director shall return it with  
14 an explanation detailing the reasons for the disapproval to the appropriate county treasurer for correction. If the  
15 director approves a request, the director shall transmit it to the department of administration, which shall draw  
16 a warrant payable to the county in the amount shown on the request and shall send the warrant to the county  
17 treasurer. The warrant is payable out of any funds to the credit of the department of fish, wildlife, and parks. ~~A~~  
18 ~~payment may not be made to a county in which the department owns less than 100 acres. A payment may not~~  
19 ~~be made to a county for lands owned by the department for game or bird farms or for fish hatchery purposes or~~  
20 ~~lands acquired and managed for the purposes of Title 23, chapter 1."~~

21

22 NEW SECTION. **Section 17. Effective date.** [This act] is effective July 1, 2007.

23

- END -